

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1585 Docket No. 05-0009, 0730

DATE RECEIVED 4-5-89 ADOPTED W/O HEARING X

REVIEW DATE 4-14-89 EMERGENCY RULE _____

DUE DATE 4-19-89 REVISOR APPROVED _____

APPROVED 4.19.89 mjC REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

~~Notice to Solicit Outside Information/Opinion (if applicable)~~
~~Date published in State Register~~
~~Comments~~

~~Petition for Adoption of a Rule (if applicable)~~

~~Board's Authorizing Resolution~~
~~Date adopted~~

✓ Proposed Rule
yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
2/16/89 Statutory Authority
no Small Business Statement
no Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)
yes Small Business Statement
N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
1/27/89 Date 30/25 days before adoption
OK Notice attached
~~N/A~~ ~~Copy of rule or summary attached~~

✓ Publication in State Register
1/30/89 Date 30/25 days before adoption

180-day deadline from:
(*) 8/1/88 Effective date of law requiring rule (14.12) (both rules) 1988 Laws ch 617 §1
3/1/89 end of comment period (§ 14.26) (rules without hearing)
~~effective date of statutory authority (§ 14.29) (emergency rules)~~

~~Resolution Adopting~~
~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
3/28/89 Date

✓ Written requests, submissions or comments (5)

✓ Declaration of attorney
Marilyn Murray Name of SAAG representing agency

~~Notice of Submission to Atty. Gen. (if applicable)~~

~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : April 19, 1989

TO : Mary Jo Murray
Special Assistant Attorney General

FROM : MARTY CASSERLY
Special Assistant Attorney General

PHONE : 6-6839

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Cost-Share Maxi-Audit Grants for Public and Private Institutions

The above-referenced rule has been approved as to its legality by the Attorney General on April 19, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:klk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Public Service

Adopted Permanent Rules Relating to Cost-Share Maxi-Audit Grants for Public and Private Institutions

Rules as Adopted

7660.0010 PURPOSE.

Parts 7660.0010 to 7660.0090 establish the criteria and procedures for granting financial assistance to Minnesota public and private institutions for conducting building energy audits using money allocated to the department from the state's allocation of petroleum violation escrow funds.

7660.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7660.0010 to 7660.0090, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means any statutory or home rule charter city, county, town, or school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for grant funds under this program.

Subp. 3. **Authorized cost-share maxi-auditor or auditor.** "Authorized cost-share maxi-auditor" or "auditor" is a person who has met the requirements of part 7660.0040.

Subp. 4. **Building.** "Building" means any existing, separate, enclosed structure owned and operated by an applicant as defined in this part.

Subp. 5. **Cost-share maxi-audit.** "Cost-share maxi-audit" means a detailed engineering analysis of a building and its energy using systems, including the plumbing, lighting, heating, ventilating, and air conditioning systems. The primary objective of a cost-share maxi-audit is to identify and quantify the economic and engineering feasibility of energy conservation measures for a building and its energy using systems.

Subp. 6. **Cost-share maxi-audit manual or manual.** "Cost-share maxi-audit manual" or "manual" means the manual

Approved by Revisor

incorporated by reference in part 7680.0200.

Subp. 7. **Cost-share maxi-audit report or report.** "Cost-share maxi-audit report" or "report" means a written document prepared according to the cost-share maxi-audit manual, as the result of a cost-share maxi-audit of a building.

Subp. 8. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 9. **Hospital.** "Hospital" means a public or private facility licensed under Minnesota Statutes, sections 144.50 to 144.55.

Subp. 10. **School.** "School" means a public school district or private institution that:

A. provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. (1) provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of a certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program that is acceptable for full credit toward such a degree at any institution that meets the preceding requirements and provides such a program; or

C. provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and meets the provisions in item B, subitems (1), (2), and (3).

Subp. 11. **TA.** "TA" means Institutional Conservation Program Technical Assistance.

7660.0030 ELIGIBILITY.

Approved
by Revisor _____

All applicants are eligible for cost-share maxi-audit grants for buildings that they own and operate. A building for which an applicant has received cost-share maxi-audit funds or TA funds is not eligible for another cost-share maxi-audit grant until five years after the date of the previous cost-share maxi-audit or TA grant payment.

7660.0040 COST-SHARE MAXI-AUDITOR AUTHORIZATION.

An authorized cost-share maxi-auditor is a person who is a professional electrical or mechanical engineer or architect, registered in Minnesota, and who has:

A. agreed to abide by the requirements of this part when conducting cost-share maxi-audits;

B. agreed to attend mandatory cost-share maxi-audit information training sessions conducted by the department;

C. signed and submitted to the department, upon completion of the mandatory cost-share maxi-audit training, the authorization agreement for cost-share maxi-auditors that is provided in the manual, and is available upon request from the department; and

D. agreed to make appropriate changes and additions to a cost-share maxi-audit report within 30 days after being sent written notification from the department of the required changes and additions.

The requirements in this part must be adhered to in order for a person to maintain authorized cost-share maxi-auditor status.

7660.0050 APPLICATION.

Subpart 1. **Process.** The applicant must submit to the department an application for cost-share maxi-audit funds on a form provided by the department. This application must include the following:

A. the applicant's name and address;

B. the name and address of the building;

C. the area of the building in square feet;

D. the building audit status as to whether it has

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by Revisor _____

been previously maxi-audited or unaudited;

E. the date of the application; and

F. the contact person's name, title, and telephone number.

Subp. 2. **Application period.** The department will process applications in accordance with part 7660.0060, subpart 1, until all funds have been encumbered.

7660.0060 CONTRACT PROCESS.

Subpart 1. **Application review.** Upon receipt of an eligible application, the department will determine the funding limits for each building according to part 7660.0090, subpart 2, and will prepare a cost-share maxi-audit grant contract for each building.

Subp. 2. **General.** The department will send the prepared contract to the applicant for signatures by two of the applicant's officials authorized to sign contracts. Grant contracts must be signed and received by the department within 45 days of the department's mailing date to the applicant. If the grant contract has not been returned within 45 days, the funds may be redistributed to other applicants. After complete execution of the grant contract by the state of Minnesota, the department will send to the applicant a copy of the fully executed contract, required scope of work, and a list of authorized cost-share maxi-auditors.

7660.0070 COST-SHARE MAXI-AUDIT REPORT REVIEW.

The department will review cost-share maxi-audit reports to verify that all requirements of the manual have been fulfilled. If the department review identifies requirements that have not been fulfilled, the department will notify both the grantee and the authorized cost-share maxi-auditor of the necessary changes and additions. The department may conduct an on-site verification of the data contained in the report. When the report has been determined to fulfill all requirements, notice of acceptance will be sent to the grantee.

Approved
by Revisor _____

7660.0080 REIMBURSEMENT.

To be reimbursed for the funds approved in part 7660.0090, subpart 2, the following conditions must be met:

A. The grantee must not have contracted for or begun work before the fully executed grant contract was received by the grantee.

B. The cost-share maxi-audit must have been conducted by an authorized cost-share maxi-auditor.

C. The grantee must have submitted to the department no later than 90 days before the expiration date of the contract, the following:

(1) one copy of the cost-share maxi-audit report signed by an authorized cost-share maxi-auditor for each building that was awarded a cost-share maxi-audit grant; and

(2) one copy of the invoice for the cost-share maxi-audit work, itemized by building.

D. The cost-share maxi-audit report must have met the requirements of the manual.

7660.0090 FUNDING.

Subpart 1. **Priorities.** The department will process grant applications that comply with parts 7660.0010 to 7660.0070 on a first-come first-served basis, based on the day an eligible and complete application is received by the department. If eligible and complete applications received on the same day cannot all be funded due to lack of available funds, the department will first process applications for previously unaudited buildings. If funds are not available for all eligible applications for previously unaudited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. If funds are available after processing all eligible applications for previously unaudited buildings, the department will process eligible grant applications for previously audited buildings. If funds are not available for all eligible applications for previously audited buildings, the department will process grants so that each

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affected application receives an equal percentage of the eligible grant amount. When all available funds have been encumbered, the department will not process any further applications and affected applicants will be notified.

Subp. 2. **Limits.** Grants will be issued by the department for eligible applications ~~up-to-the-funding-limits,~~ based on ~~building-size,-as-shown-in-the-following-table~~ a formula of $.04 per square foot of area plus $2,000. The department will reimburse grantees for 80 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7660.0080 have been met.

~~Funding-Limits-for-Cost-Share-Maxi-Audits~~

~~Building-Size in-Square-Feet~~	~~Formula~~	~~Funding-Limits~~
~~0-----5,000~~	~~--~~	~~$800~~
~~5,001----25,000~~	~~--~~	~~$1600~~
~~25,001----50,000~~	~~(Area)($.064/sq.-ft.)~~	~~$1600---$3200~~
~~50,001---100,000~~	~~(Area)($.0384/sq.-ft.)-+-$1280~~	~~$3200---$5120~~
~~100,001---150,000~~	~~(Area)($.0256/sq.-ft.)-+-$2560~~	~~$5120---$6400~~
~~150,001---200,000~~	~~(Area)($.0192/sq.-ft.)-+-$3520~~	~~$6400---$7360~~
~~200,001---250,000~~	~~(Area)($.0128/sq.-ft.)-+-$4800~~	~~$7360---$8000~~
~~250,001---and-up~~	~~--~~	~~$8000~~

Subp. 3. **Restrictions.** Institutions awarded cost-share maxi-audit grants with money from the state's cost-share maxi-audit program or TA funds cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

Approved by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 19 1989

Joan Anderson Growe
Secretary of State

2:45 pm JH

APPROVED AS TO FORM AND LEGALITY

April 19 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Public Service

Proposed Permanent Rules Relating to Cost-Share Maxi-Audit Grants for Public and Private Institutions

Rules as Proposed (all new material)

7660.0010 PURPOSE.

Parts 7660.0010 to 7660.0090 establish the criteria and procedures for granting financial assistance to Minnesota public and private institutions for conducting building energy audits using money allocated to the department from the state's allocation of petroleum violation escrow funds.

7660.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7660.0010 to 7660.0090, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means any statutory or home rule charter city, county, town, or school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for grant funds under this program.

Subp. 3. **Authorized cost-share maxi-auditor or auditor.** "Authorized cost-share maxi-auditor" or "auditor" is a person who has met the requirements of part 7660.0040.

Subp. 4. **Building.** "Building" means any existing, separate, enclosed structure owned and operated by an applicant as defined in this part.

Subp. 5. **Cost-share maxi-audit.** "Cost-share maxi-audit" means a detailed engineering analysis of a building and its energy using systems, including the plumbing, lighting, heating, ventilating, and air conditioning systems. The primary objective of a cost-share maxi-audit is to identify and quantify the economic and engineering feasibility of energy conservation measures for a building and its energy using systems.

Subp. 6. **Cost-share maxi-audit manual or manual.** "Cost-share maxi-audit manual" or "manual" means the manual

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incorporated by reference in part 7680.0200.

Subp. 7. **Cost-share maxi-audit report or report.** "Cost-share maxi-audit report" or "report" means a written document prepared according to the cost-share maxi-audit manual, as the result of a cost-share maxi-audit of a building.

Subp. 8. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 9. **Hospital.** "Hospital" means a public or private facility licensed under Minnesota Statutes, sections 144.50 to 144.55.

Subp. 10. **School.** "School" means a public school district or private institution that:

A. provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. (1) provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of a certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program that is acceptable for full credit toward such a degree at any institution that meets the preceding requirements and provides such a program; or

C. provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and meets the provisions in item B, subitems (1), (2), and (3).

Subp. 11. **TA.** "TA" means Institutional Conservation Program Technical Assistance.

7660.0030 ELIGIBILITY.

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All applicants are eligible for cost-share maxi-audit grants for buildings that they own and operate. A building for which an applicant has received cost-share maxi-audit funds or TA funds is not eligible for another cost-share maxi-audit grant until five years after the date of the previous cost-share maxi-audit or TA grant payment.

7660.0040 COST-SHARE MAXI-AUDITOR AUTHORIZATION.

An authorized cost-share maxi-auditor is a person who is a professional electrical or mechanical engineer or architect, registered in Minnesota, and who has:

A. agreed to abide by the requirements of this part when conducting cost-share maxi-audits;

B. agreed to attend mandatory cost-share maxi-audit information training sessions conducted by the department;

C. signed and submitted to the department, upon completion of the mandatory cost-share maxi-audit training, the authorization agreement for cost-share maxi-auditors that is provided in the manual, and is available upon request from the department; and

D. agreed to make appropriate changes and additions to a cost-share maxi-audit report within 30 days after being sent written notification from the department of the required changes and additions.

The requirements in this part must be adhered to in order for a person to maintain authorized cost-share maxi-auditor status.

7660.0050 APPLICATION.

Subpart 1. **Process.** The applicant must submit to the department an application for cost-share maxi-audit funds on a form provided by the department. This application must include the following:

A. the applicant's name and address;

B. the name and address of the building;

C. the area of the building in square feet;

D. the building audit status as to whether it has

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by Revisor _____

been previously maxi-audited or unaudited;

E. the date of the application; and

F. the contact person's name, title, and telephone number.

Subp. 2. **Application period.** The department will process applications in accordance with part 7660.0060, subpart 1, until all funds have been encumbered.

7660.0060 CONTRACT PROCESS.

Subpart 1. **Application review.** Upon receipt of an eligible application, the department will determine the funding limits for each building according to part 7660.0090, subpart 2, and will prepare a cost-share maxi-audit grant contract for each building.

Subp. 2. **General.** The department will send the prepared contract to the applicant for signatures by two of the applicant's officials authorized to sign contracts. Grant contracts must be signed and received by the department within 45 days of the department's mailing date to the applicant. If the grant contract has not been returned within 45 days, the funds may be redistributed to other applicants. After complete execution of the grant contract by the state of Minnesota, the department will send to the applicant a copy of the fully executed contract, required scope of work, and a list of authorized cost-share maxi-auditors.

7660.0070 COST-SHARE MAXI-AUDIT REPORT REVIEW.

The department will review cost-share maxi-audit reports to verify that all requirements of the manual have been fulfilled. If the department review identifies requirements that have not been fulfilled, the department will notify both the grantee and the authorized cost-share maxi-auditor of the necessary changes and additions. The department may conduct an on-site verification of the data contained in the report. When the report has been determined to fulfill all requirements, notice of acceptance will be sent to the grantee.

Approved
by Revisor _____

7660.0080 REIMBURSEMENT.

To be reimbursed for the funds approved in part 7660.0090, subpart 2, the following conditions must be met:

A. The grantee must not have contracted for or begun work before the fully executed grant contract was received by the grantee.

B. The cost-share maxi-audit must have been conducted by an authorized cost-share maxi-auditor.

C. The grantee must have submitted to the department no later than 90 days before the expiration date of the contract, the following:

(1) one copy of the cost-share maxi-audit report signed by an authorized cost-share maxi-auditor for each building that was awarded a cost-share maxi-audit grant; and

(2) one copy of the invoice for the cost-share maxi-audit work, itemized by building.

D. The cost-share maxi-audit report must have met the requirements of the manual.

7660.0090 FUNDING.

Subpart 1. **Priorities.** The department will process grant applications that comply with parts 7660.0010 to 7660.0070 on a first-come first-served basis, based on the day an eligible and complete application is received by the department. If eligible and complete applications received on the same day cannot all be funded due to lack of available funds, the department will first process applications for previously unaudited buildings. If funds are not available for all eligible applications for previously unaudited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. If funds are available after processing all eligible applications for previously unaudited buildings, the department will process eligible grant applications for previously audited buildings. If funds are not available for all eligible applications for previously audited buildings, the department will process grants so that each

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by Revisor _____

affected application receives an equal percentage of the eligible grant amount. When all available funds have been encumbered, the department will not process any further applications and affected applicants will be notified.

Subp. 2. **Limits.** Grants will be issued by the department for eligible applications up to the funding limits, based on building size, as shown in the following table. The department will reimburse grantees for 80 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7660.0080 have been met.

Funding Limits for Cost-Share Maxi-Audits

Building Size in Square Feet	Formula	Funding Limits
0 - 5,000	--	$800
5,001 - 25,000	--	$1600
25,001 - 50,000	(Area)($.064/sq. ft.)	$1600 - $3200
50,001 - 100,000	(Area)($.0384/sq. ft.) + $1280	$3200 - $5120
100,001 - 150,000	(Area)($.0256/sq. ft.) + $2560	$5120 - $6400
150,001 - 200,000	(Area)($.0192/sq. ft.) + $3520	$6400 - $7360
200,001 - 250,000	(Area)($.0128/sq. ft.) + $4800	$7360 - $8000
250,001 - and up	--	$8000

Subp. 3. **Restrictions.** Institutions awarded cost-share maxi-audit grants with money from the state's cost-share maxi-audit program or TA funds cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Cost-Share Maxi-Audit Grants for Public and Private Institutions

AGENCY: Department of Public Service

MINNESOTA RULES: Chapter 7660

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

Department of Public Service

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Cost-share Maxi audits for Public and Private Institutions	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Public Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in Minnesota Statutes, section 216C.09.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Pat Haney
Department of Public Service
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: (612) 297-2103

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Haney upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Ms. Haney at the address given above.

Dated: January 27, 1989

Tony Perpich

Tony Perpich, Commissioner

Statement of Need and Reasonableness

Cost-Share Maxi-Audit Program for Public and Private Institutions

I. This Statement of Need and Reasonableness describes the permanent rules proposed for the Cost-Share Maxi-Audit Grant Program for public and private institutions. The proposed rules are modeled on the rules of the State Cost-Share Maxi-Audit Grant Program, the Department, and other state agencies which operate similar programs and also on the procedures published at State Register January 30, 1984 (8S.R. 1614).

II. Impact on Small Business

The proposed rules create a program of financial assistance to Minnesota public and private institutions to conduct building energy audits and, as such, have no direct effect on small businesses. Rules covering programs such as this are exempted from Minn. State., sec. 14.115 by subd. 7(b) which exempts rules which do not directly affect small businesses.

III. Need and Reasonableness of Each Rule Provision.

Proposed part 7660.0010 states the purpose of the proposed rules. This part is needed to introduce the proposed rules and its reasonableness is self evident.

Proposed part 7660.0020 defines terms which have distinct meanings when used within the context of these rules.

Subpart 1 is needed as an introductory and explanatory sentence regarding the use of the definitions. Its reasonableness is self evident.

Subpart 2 defines an applicant as any statutory or home rule charter city, county, town or school or hospital as defined in the rule or joint power of these. This definition is needed to identify the institutions that are eligible under this program. It is reasonable to limit eligibility to those institutions eligible under the Institutional Energy Loan Program (IELP) which is being funded from these petroleum violation escrow funds.

Subpart 3 defines an authorized cost-share maxi-auditor as a person who has met the requirements of part 7660.0040 of the proposed rules. It is needed to give the reader a specific definition for a term used often within the rule. As such, its reasonableness is self-evident.

Subpart 4 defines building as any existing, separate, enclosed structure owned and operated by an institution. This definition is needed to identify those buildings which are eligible

for the grant program. It is necessary and reasonable to specify existing because an audit cannot be conducted on a building not yet constructed. It is necessary to specify separate to make clear that building wings or additions are not individually eligible for grants. It is reasonable to require that buildings be audited as a whole because the energy use in part of a building is inextricably intertwined with use in other parts. It is necessary to specify enclosed to eliminate buildings such as band shells and picnic shelters from grant consideration. It is reasonable to exclude such unenclosed buildings because their energy saving potential is small, and, given the limited funds available for audits, those funds should be directed toward buildings with greater savings potential. It is necessary to specify owned and operated by an applicant (as defined in 7660.0020, Subpart 2) to clearly state the types of organizations that are eligible for a grant, and the buildings for which they are eligible. It is reasonable to limit eligibility to applicants as defined to match the eligible institutions of the Institutional Energy Loan Program which is being funded from these petroleum violation escrow funds. It is reasonable to require that a building be owned and operated by an applicant because, ultimately, the purpose of the grant program is to induce applicants to make capital improvements in their facilities that may have a near term negative effect on cash flow, but which over the useful life of the improvement provide a significant net benefit. While

present ownership and operation does not guarantee that the applicant will remain the beneficiary over the useful life of an improvement, the applicant, as owner, does control the decision to change that status. Furthermore, if the building is sold, such capital improvements should be reflected in the sale price.

Subpart 5 defines Cost-Share Maxi-Audit. This definition is needed to establish a specific meaning for a term that is not in common usage. It is reasonable because it is consistent with other definitions of maxi-audit in statue (116J.06 Subdivision 12; 116J.37, Subdivision 1, paragraph b as amended by Laws of Minnesota 1987, Chapter 289, Section 1, paragraph b).

Subpart 6 defines Cost-Share Maxi-Audit manual or manual as the manual incorporated by reference in part 7680.0200 of the State's Cost-Share Maxi-Audit Program Rules. It is needed to provide a shorthand term for a reference used often in the rule, and is reasonable because it makes the rule easier to read.

Subpart 7 Cost-Share Maxi-Audit report is defined as a written document prepared according to the cost-share maxi-audit manual as the result of a cost-share maxi-audit of a building. It is needed to provide a shorthand term for a document referred to often in the rule, and is reasonable because it makes the rule easier to read.

Subpart 8 defines department to mean the Minnesota Department of Public Service. It is needed and reasonable to provide a shorthand term to make the rule more readable.

Subpart 9 defines "Hospital" as a public or private facility as licensed under Minnesota Statutes 1986, section 144.50, subdivision 2. It is necessary and reasonable to define so that only licensed hospitals can participate.

Subpart 10 defines School. It is needed to identify the types of schools eligible for program funds. It is reasonable to limit the schools eligible under this program to those that are eligible for the IELP.

Proposed part 7660.0030 establishes the criteria for eligibility for grants. The need and reasonableness of the provisions in the first sentence of this part are explained in the portion of this statement related to part 7660.0020 subpart 4. These provisions are repeated here for clarity's sake.

The second sentence of this part is necessary to exclude a building from grant consideration for five years after receiving a cost-share grant to allow limited grant funds to remain available for other buildings. It is reasonable because, were a limit not imposed, an

institution could repeatedly receive grants to do "new audits" that would essentially be minor updates of the previous audit. Institutions often do minor updates, at their own expense, to prepare applications for grant and loan programs operated by the department. If these qualified for a cost-share audit grant, it is likely that as much as one-third of the available funds would be used for that purpose, thereby severely limiting the funds available to other institutions. It is reasonable to set the limit at five years because after that period it can be assumed, based on the department's experience, that sufficient changes in technology and costs have occurred to make the existing audit obsolete, while within that period the audit should remain sufficiently current.

7660.0040 establishes criteria for cost-share maxi-auditor authorization. It is necessary to set standards for maxi-auditors to ensure that the auditor is technically qualified to perform an audit, familiar with the specific requirements of the audit, and qualified, under rule, to perform an audit eligible for submission in an ECM loan or grant application. It is necessary to provide for authorization of auditors to establish a means to resolve problems with audits not meeting the required standard, and to establish a means to remove a recalcitrant auditor from eligibility for future audit work.

It is necessary and reasonable to specify that an auditor be a professional electrical or mechanical engineer or architect to ensure that the auditor is knowledgable in the areas necessary to perform an audit, and to comply with requirements of ECM grant and loan programs. It is necessary and reasonable to require that an auditor be registered in Minnesota to ensure that the auditor is familiar with Minnesota's Building Code and Energy Code, and to comply with requirements of ECM grant and loan programs. It is necessary to require that an auditor agree to abide by the requirements of this part in conducting maxi-audits to provide a clear indication on the part of the auditor that he/she is aware of and consents to these requirements. It is reasonable to do so because loss of authorization is a consequence of noncompliance with these requirements, and if the department is to impose such a penalty, it should assure itself that the auditor was aware of that penalty.

It is necessary to require that an auditor agree to attend mandatory training sessions to ensure that the department is able to disseminate information it believes to be essential to the successful completion of an audit. It is reasonable to require that an auditor attend such sessions because, in the department's experience, auditor training is best accomplished through the use of both written materials and in-person presentations. It is necessary

to require an auditor to sign and submit the authorization agreement to provide a written record of the auditor's awareness of and consent to the authorization requirements. It is reasonable to do so because, given the severity of the penalty for noncompliance, the department should provide itself with proof of an auditor's consent. It is necessary and reasonable to require that the agreement be signed after completion of training to ensure that the auditor's consent be informed. It is necessary to require an auditor to agree to make appropriate changes to an audit report to make clear that the auditor understands that it is his/her responsibility to rectify any shortcomings in an audit report. It is reasonable to do so because the auditor's role in the audit grant process is to properly perform an audit, and statisfactory completion of an audit occurs only upon submission of a report meeting the audit standard. It is necessary and reasonable to require that changes be made within thirty days of written notice to provide a specific time limit for fulfillment of the requirement. It is reasonable to set that limit at thirty days because it allows ample time to make any needed changes. It is necessary to require an auditor to adhere to the requirements of this part to maintain authorization to provide the department with a means of enforcement of these requirements. It is reasonable because the department requires an institution to contact with an auditor on the authorized list (7660.0080). While the department makes no guarantee as to an

authorized auditor's performance, it would be remiss in knowingly providing a list that includes auditors who have previously failed to comply with minimum requirements.

Part 7660.0050 describes the application process.

Subpart 1 states that an applicant must submit an application to the department on a form provided by the department. This subpart is needed to inform applicants of the proper receipt of an application, and to provide a consistent format for all applications. It is reasonable to require a standard application form to assist the applicant in identifying the information necessary for a complete application. The subpart then lists the required contents of an application. It is needed to clearly delineate the required contents. It is reasonable to do so because, for determining order of funding, an application will be considered to be received by the department only if it is complete (7660.0090). If the department is to decide that an application is incomplete, it must have a specific standard for doing so. The need and reasonableness of requiring the applicant's name and address and the name and address of the building for which application is being made are self-evident. It is necessary and reasonable to require the building square footage to determine the funding limit for that building. It is necessary and reasonable to require the building audit status to assist the department in determining whether the building is eligible under

part 7660.0020. It is necessary and reasonable to require the date of application to distinguish an application from any others submitted for that building on other dates. It is necessary and reasonable to require a contact person's name, title and telephone number to identify a representative of the applicant designated to receive the grant contract and to contact should the department require further information

Subpart 2 states that the department will process applications in accordance with part 7660.0090 subpart 1 until all funds are encumbered. It is necessary and reasonable to inform the applicant of the department's actions upon receipt of an application. The need for and reasonableness of part 7660.0090 subpart 1 will be discussed at that part.

Part 7660.0060 describes the contact process.
Subpart 1 states that the department will determine funding limits according to part 7660.0090 subpart 2 and prepare a grant contract for each building in an eligible application. The need to assign these tasks to one of the involved parties is self-evident. It is reasonable that the department determine the funding limits and prepare the grant contracts to ensure that the funding limit is properly calculated and that the state's interests, as grantor, are properly protected in the contracts. It is necessary and reasonable

to prepare a contract for each building because, in the department's experience, grantees often apply for funds for more buildings than are eventually audited. The department believes that it is simpler, for both parties, to void the contracts for those buildings not audited (or allow the contracts to expire) than to amend a single multi-building contract each time the grantee decides to eliminate a building from the scope of work to be performed.

Subpart 2 states that the department will send the prepared contract to the applicant for signature by two of the applicant's officials authorized to sign contracts. It is necessary and reasonable to require the signature of two officials to insure that an official does not act unilaterally in committing the applicant to the contract. Subpart 2 also states that a contract must be signed and returned within 45 days of mailing by the department, and that if this requirement is not met, the funds may be redistributed to other applicants. This provision is necessary to compel timely execution of contracts, and to allow the department to redirect funds if the applicant does not act in a timely manner. It is reasonable to do so because, barring such a provision, the department could not redirect those funds until the expiration date of the pending contract. If all available grant funds have been encumbered, and other applicants await funds, the department believes that it is appropriate to allow another applicant an opportunity to use those

funds. It is reasonable to limit the time allowed to 45 days because, as the governing bodies of institutions generally meet at least once within that timespan, it allows ample time to secure the governing body's approval, if needed. Subpart 2 also states that, after complete execution of the contract, the department will send the institution a copy of the fully executed contract, required scope of work, and a list of authorized cost-share maxi-auditors. It is necessary and reasonable to send the grantee a copy of the contract and required scope of work so that the grantee has a record of the requirements of the agreement. It is necessary and reasonable to send the grantee a list of authorized auditors to inform the grantee of the group of persons who are eligible to perform the audits.

Part 7660.0070 describes the Cost-Share Maxi-Audit report review. It states that the department will review audit reports to verify that the requirements of the audit manual have been met. It is necessary and reasonable because compliance with the requirements of the audit manual is a condition of grant fulfillment (7660.0080, D). The part further states that, if shortcomings are identified, the department will notify both the grantee and the auditor. The need and reasonableness of notifying the grantee is self evident. It is necessary and reasonable to notify the auditor because, under part 7660.0040 (D), the auditor is required to make the needed corrections. The part also states that the department may conduct

an on-site verification of audit data. It is necessary and reasonable to allow the department of resolve questions concerning audit data, if written and oral information do not provide adequate clarification. Finally, the part states that a notice of acceptance will be sent to the grantee upon determination that the audit requirements have been met. It is necessary and reasonable to inform the grantee of the department's determination.

Part 7660.0080 states the conditions to be met for payment of the grant funds. (A) It is necessary to require that work cannot be contracted for or begun before receipt of the fully executed grant contract to discourage applicants from entering into contractual obligations prior to securing a means of repayment. It is reasonable because, in requiring the applicant to wait until an executed contract is in hand, the impact of a potential misunderstanding of the department's intent to fund an application can be minimized. (B) The need for and reasonableness of the requirement that an audit be conducted by an authorized auditor are discussed at the section of this statement pertaining to part 7660.0040. (C) It is necessary and reasonable to require the grantee to submit the maxi-audit report so the department can determine that the audit requirements have been met. It is necessary and reasonable to require the grantee to submit the invoice for the audit work, itemized by building, to determine the

allowable grant amount for each building. It is necessary and reasonable to require that the audit and invoice be submitted 90 days prior to the expiration of the grant contract to allow sufficient time for department review, corrections and additions if needed, and processing of the payment request. (D) the need for and reasonableness of the requirement that the audit meet the requirements of the manual are discussed at the section of this statement pertaining to part 7660.0030.

Part 7660.0090 describes the priorities and funding limits under which grants will be awarded. Subpart 1 states that applications will be funded on a first come, first served basis, except when sufficient funds are not available to fund all eligible applications received on the same day. The subpart then establishes a funding priority for applications for buildings not previously audited and provides for proportional funding of applications when sufficient funds are not available to fully fund those applications. The subpart also provides for proportional funding of applications for previously audited buildings after fully funding applications for buildings not previously audited. This subpart is needed to establish a method to determine the priority of an application. It is reasonable because, when sufficient funds are available, all eligible applicants are given an equal opportunity to receive loan funds. It is reasonable to give unaudited buildings a higher priority when sufficient funds are not available because an

applicant with a previous, albeit outdated, audit has some useful information available in the existing audit, and has a document that can be used for grant and loan applications. Having made this priority determination, the department believes that any other fair assessment of priority would require the submission of a burdensome amount of financial information by the applicant. It is, therefore, more reasonable to give an equal percentage of the eligible grant amount to each applicant with the same priority.

Subpart 2 sets grant funding limits at the lesser of 80% of the audit cost or a funding schedule based on a cost per square foot plus a fixed cost per building regardless of size. The limits used are reasonable because they are based on comments received by auditors who have participated in the programs funded by this department and its predecessors. It is necessary to limit grants to a percentage of audit costs to provide a local investment in the audit. It is reasonable to do so because, with limited grant funds, the department wishes to leverage other funds to increase the impact of this program. Furthermore, experience has shown that, when no local contribution is required, applicants have given little consideration to cost effectiveness in choosing buildings to audit. Applicants required to make an investment in an audit tend to examine more carefully the potential benefit of the audit. It is reasonable to set the limit at 80% because it allows a significant

leveraging of other funds while providing sufficient inducement for program participation.

Subpart 3 restricts the use of these grant funds as a match for other grant funds available from the department. It is necessary to provide a local investment in the audit. The reasonableness of requiring local investment is discussed in the previous paragraph.

Department of Public Service

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Cost-Share Maxi-Audits for Public and Private Institutions

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Will Owens, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Public Service rulemaking mailing list is accurate, complete, and current as of this 27th day of January, 1989.

Will Owens

Will Owens
Senior Programmer

Subscribed and sworn to before me this 27th day of January, 1989

Dennis M. Devereaux

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Apr. 1, 1994

Marlene Odeen, being sworn says:

That on the 27th day of January, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Marlene Odeen

Marlene Odeen, Secretary

Subscribed and sworn to before me this 27th day of January, 1989.

Dennis M. Devereaux

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Apr. 1, 1994

1720.1570 INSPECTIONS.

Periodic inspections ~~will be made by agents of the board of all kennels licensed under this rule in addition to the inspection required prior to obtaining a license. Duly authorized agents may enter upon the premises of any dog kennel licensed hereunder during daylight hours for the purpose of inspecting for compliance with the provision of the law and these rules.~~ must be made in cooperation with the United States Department of Agriculture, pursuant to *Minnesota Statutes*, section 347.35.

1720.1575 INVESTIGATION OF COMPLAINTS.

Complaints must be referred to local enforcement authorities. If the complainant is not satisfied with the results obtained and the complainant wants an investigation by the board, the complainant must send to the board a written and signed complaint and a deposit of $100. Upon investigation, if the complaint is warranted, the deposit must be returned and the board shall take action as provided in *Minnesota Statutes*, section 347.38. If the complaint is deemed unfounded by the board investigator, the deposit must go into the general fund. Duly authorized agents are exempt from the $100 deposit for investigation of a complaint.

1720.1576 EXPENSES OF INVESTIGATION.

A person who violates *Minnesota Statutes*, section 346.55 or sections 347.31 to 347.40, is liable for at least the amount of the expenses of the investigation. Expenses of investigation may be recovered by a court action in the county where the violation occurred.

1720.1578 COST RECOVERY.

Money from license fees, fines, penalties, or deposits under *Minnesota Statutes*, section 346.55 or sections 347.31 to 347.40, goes into the general fund and must be accounted for by the state treasurer to the board to enable a showing that costs of inspection and enforcement of *Minnesota Statutes*, sections 346.55 and 347.31 to 347.40, have been recovered.

REPEALER.

Subpart 1. *Minnesota Rules*, parts 1720.1330, subpart 3; 1720.1340; 1720.1350; 1720.1360; 1720.1370; 1720.1380; 1720.1470; 1720.1580; 1720.1590; 1720.1600; 1720.1610; 1720.1620; 1720.1630; 1720.1640; 1720.1650; 1720.1660; and 1720.1670, are repealed.

Subp. 2. **Remove Duplication and Footnotes.** *Minnesota Rules*, parts 1710.0350, 1710.0360, 1710.0370, 1710.0380, 1710.0390, 1717.0400, 1710.0410, 1710.0420, 1710.0430, 1710.0440, 1710.0450, 1710.0460, 1710.0470, 1710.0480, 1710.0490, 1710.5000, 1710.0510, 1710.0520, 1710.0530, and 1710.0540, are repealed.

INSTRUCTION TO REVISOR. In the next and subsequent editions of *Minnesota Rules*, the revisor shall change the words "secretary and executive officer" to "executive secretary" in chapters 1700, 1705, 1715, and 1720.

State Board of Education

Withdrawal of Proposed Permanent Rules Relating to Class Size Ratios

NOTICE IS HEREBY GIVEN that the proposed rules relating to Class Size Ratios, as published in the *State Register* at Volume 12, Number 11, pages 438-439, September 14, 1987, (12 S.R. 438) are withdrawn.

Department of Public Service

Notice of Withdrawal of Proposed Rules Relating to Cost-Share Maxi-Audit Grants for Public and Private Nonprofit Institutions

NOTICE IS HEREBY GIVEN that the proposed rules relating to Cost-share Maxi-audit grants for public and private nonprofit institutions, as published in the *State Register* on February 8, 1988, pages 1651-1655 (12 S.R. 1651), are withdrawn.

Dated: 17 January 1989

Tony Perpich, Commissioner
Department of Public Service

KEY: **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Department of Public Service

Notice of Withdrawal of Proposed Rules Relating to Institutional Energy Loan Program (IELP)

NOTICE IS HEREBY GIVEN that the proposed rules relating to the Institutional Energy Loan Program (IELP), as published in the *State Register* on February 8, 1988, pages 1655-1659 (12 S.R. 1655), are withdrawn.

Dated: 17 January 1989

Tony Perpich, Commissioner
Department of Public Service

Department of Public Service

Proposed Permanent Rules Relating to Cost-Share Maxi-Audit Grants for Public and Private Institutions

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Public Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in *Minnesota Statutes*, section 216C.09.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Pat Haney
Department of Public Services
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: (612) 297-2103

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule follows this notice.

A free copy of the proposed rule is available upon request from Ms. Haney at the address given above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Haney upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Ms. Haney at the address given above.

Dated: 17 January 1989

Tony Perpich, Commissioner
Department of Public Service

Rules as Proposed (all new material)

7660.0010 PURPOSE.

Parts 7660.0010 to 7660.0090 establish the criteria and procedures for granting financial assistance to Minnesota public and private institutions for conducting building energy audits using money allocated to the department from the state's allocation of petroleum violation escrow funds.

7660.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7660.0010 to 7660.0090, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means any statutory or home rule charter city, county, town, or school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for grant funds under this program.

Subp. 3. **Authorized cost-share maxi-auditor or auditor.** "Authorized cost-share maxi-auditor" or "auditor" is a person who has met the requirements of part 7660.0040.

Subp. 4. **Building.** "Building" means any existing, separate, enclosed structure owned and operated by an applicant as defined in this part.

Subp. 5. **Cost-share maxi-audit.** "Cost-share maxi-audit" means a detailed engineering analysis of a building and its energy using systems, including the plumbing, lighting, heating, ventilating, and air conditioning systems. The primary objective of a cost-share maxi-audit is to identify and quantify the economic and engineering feasibility of energy conservation measures for a building and its energy using systems.

Subp. 6. **Cost-share maxi-audit manual or manual.** "Cost-share maxi-audit manual" or "manual" means the manual incorporated by reference in part 7680.0200.

Subp. 7. **Cost-share maxi-audit report or report.** "Cost-share maxi-audit report" or "report" means a written document prepared according to the cost-share maxi-audit manual, as the result of a cost-share maxi-audit of a building.

Subp. 8. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 9. **Hospital.** "Hospital" means a public or private facility licensed under *Minnesota Statutes*, sections 144.50 to 144.55.

Subp. 10. **School.** "School" means a public school district or private institution that:

A. provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. (1) provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of a certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program that is acceptable for full credit toward such a degree at any institution that meets the preceding requirements and provides such a program; or

C. provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and meets the provisions in item B, subitems (1), (2), and (3).

Subp. 11. **TA.** "TA" means Institutional Conservation Program Technical Assistance.

7660.0030 ELIGIBILITY.

All applicants are eligible for cost-share maxi-audit grants for buildings that they own and operate. A building for which an applicant has received cost-share maxi-audit funds or TA funds is not eligible for another cost-share maxi-audit grant until five years after the date of the previous cost-share maxi-audit or TA grant payment.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

7660.0040 COST-SHARE MAXI-AUDITOR AUTHORIZATION.

An authorized cost-share maxi-auditor is a person who is a professional electrical or mechanical engineer or architect, registered in Minnesota, and who has:

A. agreed to abide by the requirements of this part when conducting cost-share maxi-audits;

B. agreed to attend mandatory cost-share maxi-audit information training sessions conducted by the department;

C. signed and submitted to the department, upon completion of the mandatory cost-share maxi-audit training, the authorization agreement for cost-share maxi-auditors that is provided in the manual, and is available upon request from the department; and

D. agreed to make appropriate changes and additions to a cost-share maxi-audit report within 30 days after being sent written notification from the department of the required changes and additions.

The requirements in this part must be adhered to in order for a person to maintain authorized cost-share maxi-auditor status.

7660.0050 APPLICATION.

Subpart 1. **Process.** The applicant must submit to the department an application for cost-share maxi-audit funds on a form provided by the department. This application must include the following:

A. the applicant's name and address;

B. the name and address of the building;

C. the area of the building in square feet;

D. the building audit status as to whether it has been previously maxi-audited or unaudited;

E. the date of the application; and

F. the contact person's name, title, and telephone number.

Subp. 2. **Application period.** The department will process applications in accordance with part 7660.0060, subpart 1, until all funds have been encumbered.

7660.0060 CONTRACT PROCESS.

Subpart 1. **Application review.** Upon receipt of an eligible application, the department will determine the funding limits for each building according to part 7660.0090, subpart 2, and will prepare a cost-share maxi-audit grant contract for each building.

Subp. 2. **General.** The department will send the prepared contract to the applicant for signatures by two of the applicant's officials authorized to sign contracts. Grant contracts must be signed and received by the department within 45 days of the department's mailing date to the applicant. If the grant contract has not been returned within 45 days, the funds may be redistributed to other applicants. After complete execution of the grant contract by the state of Minnesota, the department will send to the applicant a copy of the fully executed contract, required scope of work, and a list of authorized cost-share maxi-auditors.

7660.0070 COST-SHARE MAXI-AUDIT REPORT REVIEW.

The department will review cost-share maxi-audit reports to verify that all requirements of the manual have been fulfilled. If the department review identifies requirements that have not been fulfilled, the department will notify both the grantee and the authorized cost-share maxi-auditor of the necessary changes and additions. The department may conduct an on-site verification of the data contained in the report. When the report has been determined to fulfill all requirements, notice of acceptance will be sent to the grantee.

7660.0080 REIMBURSEMENT.

To be reimbursed for the funds approved in part 7660.0090, subpart 2, the following conditions must be met:

A. The grantee must not have contracted for or begun work before the fully executed grant contract was received by the grantee.

B. The cost-share maxi-audit must have been conducted by an authorized cost-share maxi-auditor.

C. The grantee must have submitted to the department no later than 90 days before the expiration date of the contract, the following:

(1) one copy of the cost-share maxi-audit report signed by an authorized cost-share maxi-auditor for each building that was awarded a cost-share maxi-audit grant; and

(2) one copy of the invoice for the cost-share maxi-audit work, itemized by building.

D. The cost-share maxi-audit report must have met the requirements of the manual.

7660.0090 FUNDING.

Subpart 1. **Priorities.** The department will process grant applications that comply with parts 7660.0010 to 7660.0070 on a first-come first-served basis, based on the day an eligible and complete application is received by the department. If eligible and complete applications received on the same day cannot all be funded due to lack of available funds, the department will first process applications for previously unaudited buildings. If funds are not available for all eligible applications for previously unaudited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. If funds are available after processing all eligible applications for previously unaudited buildings, the department will process eligible grant applications for previously audited buildings. If funds are not available for all eligible applications for previously audited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. When all available funds have been encumbered, the department will not process any further applications and affected applicants will be notified.

Subp. 2. **Limits.** Grants will be issued by the department for eligible applications up to the funding limits, based on building size, as shown in the following table. The department will reimburse grantees for 80 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7660.0080 have been met.

Funding Limits for Cost-Share Maxi-Audits

Building Size in Square Feet	Formula	Funding Limits
0 - 5,000	—	$800
5,001 - 25,000	—	$1600
25,001 - 50,000	(Area)($.064/sq. ft.)	$1600 - $3200
50,001 - 100,000	(Area)($.0384/sq. ft.) + $1280	$3200 - $5120
100,001 - 150,000	(Area)($.0256/sq. ft.) + $2560	$5120 - $6400
150,001 - 200,000	(Area)($.0192/sq. ft.) + $3520	$6400 - $7360
200,001 - 250,000	(Area)($.0128/sq. ft.) + $4800	$7360 - $8000
250,001 - and up	—	$8000

Subp. 3. **Restrictions.** Institutions awarded cost-share maxi-audit grants with money from the state's cost-share maxi-audit program or TA funds cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

Department of Public Service

Proposed Permanent Rules Relating to Institutional Energy Loans

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Public Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in *Minnesota Statutes*, section 216C.09.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

KEY: **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Comments or written requests for a public hearing must be submitted to:

Jeremy de Fiebre
Department of Public Service
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: (612) 297-1221

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule follows this notice.

A free copy of the proposed rule is available upon request from Mr. de Fiebre at the address given above.

A Statement of Need and Reasonableness that desribes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mr. de Fiebre upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Mr. de Fiebre at the address given above.

Dated: 17 January 1989

Tony Perpich, Commissioner
Department of Public Service

Rules as Proposed (all new material)

7605.0010 PURPOSE.

The purpose of parts 7605.0020 to 7605.0080 is to establish application procedures for loan participation, to set criteria for review and approval of loan participation applications, and to set criteria for loan participation agreements.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7605.0010 to 7605.0080, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a statutory or home rule charter city, county, or town, or a school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for loan participation under this program.

Subp. 3. **Building.** "Building" means any separate structure owned and operated by an applicant.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Hospital.** "Hospital" means a facility licensed under *Minnesota Statutes*, sections 144.50 to 144.55.

Subp. 7. **Lender.** "Lender" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of Housing and Urban Development or by the administrator of the United States Department of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located in or out of Minnesota, which issues a loan to an applicant to implement energy conservation measures. For participation in loans to applicants eligible for funds under *Minnesota Statutes*, section 216C.37, lender also means the Minnesota Department of Finance.

Subp. 8. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 9. **Project.** "Project" means all proposed work in a loan participation application.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SERVICE

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Cost-Share Maxi-Audits for Public and Private Institutions	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on January 30, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 on January 27, 1989. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was sent to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

Five comments on the rule were received by the agency. All five commentors proposed increased grant funding limits. In addition, two commentors proposed simplification of the minimum requirements for audits.

No requests for notice of submission to the attorney general were received by the agency.

Based on the evidence in the record before the agency, I find the following:

The above-captioned rule is needed and reasonable.

The comments received support modification of part 7660.0900, subp. 2. All five commentors are experienced maxi-auditors. In light of their experience and the actual cost data that they presented, the commentors' argument for a higher funding limit is persuasive. Such a modification would not affect any class of persons not affected by the proposed rule as originally noticed, would not introduce new subject matter, and would not make a major sustantive change to the rule as noticed. Consequently, the proposed modification is not a substantial change under Minnesota Rules, part 2010.1000, item D. Therefore, the proposed rule is modified as follows:

7660.0900 FUNDING... Subp. 2. Limits. Grants will be issued by the department for eligible applications ~~up-to-the-funding-limits,~~ based on ~~building-size,-as-shown-in-the-following-table~~ a formula of $.04 per square foot of area plus $2,000. The department will

reimburse grantees for 80 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7660.0800 have been met.

~~Funding Limits for Cost Share Maxi Audits~~

~~Building Size in Square Feet~~	~~Formula~~	~~Funding Limits~~
~~0-----5,000~~	~~--~~	~~$800~~
~~5,001----25,000~~	~~--~~	~~$1600~~
~~25,001----50,000~~	~~(Area)($.064/sq.-ft.)~~	~~$1600---$3200~~
~~50,001---100,000~~	~~(Area)($.0384/sq.-ft.)-+-$1280~~	~~$3200---$5120~~
~~100.001---150,000~~	~~(Area)($.0256/sq.-ft.)-+-$2560~~	~~$5120---$6400~~
~~150,001---200,000~~	~~(Area)($.0192/sq.-ft.)-+-$3520~~	~~$6400---$7360~~
~~200,001---250,000~~	~~(Area)($.0128/sq.-ft.)-+-$4800~~	~~$7360---$8000~~
~~250,001---and up~~	~~--~~	~~$8000~~

The comments received do not support modification of the minimum requirements for an audit. To appreciably lower the audit cost for a small building, the scope of the audit must be significantly reduced. To do so, however, would preclude the use of such an audit as part of an application for funds from the Institutional Conservation Program or the Municipal Energy Investment Loan Program and, consequently, would considerably reduce the value of the audit to the grantee.

NOW, THEREFORE, IT IS ORDERED that the rule identified as 7660.0010 to 7660.0090, as modified, is adopted this 28th day of March, 1989, pursuant to the authority vested in me by Minnesota Statutes, section 216C.09.

Tony Perpich, Commissioner
Department of Public Service

2010.9935 RECOMMENDED DECLARATION OF COUNSEL

In the Matter of the Adoption of the Rule of the State Department of Public Service Governing Cost-share Maxi audits for Public and Private Institutions

DECLARATION OF COUNSEL

I, Mary Jo Murray, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four digit docket client code is 0730.

MARY JO MURRAY
Special Assistant
Attorney General

Dated: April 4, 1989

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